

## **EXHIBIT B**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

**THE GERFFERT COMPANY, INC., AND  
STEPHEN PANIGEL**

1:09-CV-00266-KAM-CLP

**Plaintiffs,**

**x**

**-against-**

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**A**

**Defendants,**

**DECLARATION OF ANDREA BONELLA IN SUPPORT OF DEFENDANTS’  
MOTION TO DISQUALIFY PLAINTIFFS’ COUNSEL**

**I, Andrea Bonella, declare as follows:**

1. I am a defendant in the above-referenced case. I have personal knowledge of the facts stated herein, and if called to testify, I could competently do so. I submit this Declaration in support of Defendants' Motion to Disqualify Plaintiffs' Counsel.

2. I have worked for Fratelli Bonella srl ("Fratelli Bonella"), also a defendant in the above-referenced case, at all times relevant to the above-referenced case. I am also involved with William J. Hirten Co., LLC ("Hirten"), yet another defendant in the above-referenced case.

3. From at least as early as March 2003, and continuing through at least December 2008, Mark Horowitz, a New York attorney, represented Fratelli Bonella and members of the Bonella family (collectively “Bonella”), including myself. Attached hereto as Exhibit A is a true

and correct copy of a letter from Mr. Horowitz to Barton Cotton, Inc. which Mr. Horowitz starts with “I am the attorney for Fratelli Bonella, S.R.L., of Milan, Italy.” From December 2005 through December 2008, Mr. Horowitz was paid thirty thousand dollars (\$30,000) per year in exchange for representing Bonella in a wide variety of matters. Attached hereto, collectively as Exhibit B, are true and correct copies of billing invoices from Mr. Horowitz requesting payment from Bonella for Mr. Horowitz’s legal services. In fact, Bonella has never received any communication from Mr. Horowitz indicating that he no longer represents Bonella. Rather, even as late as December 10, 2008, Mr. Horowitz confirmed his continued representation of Bonella, despite the fact that Bonella would no longer be paying him a quarterly flat-fee retainer – “If you wish to pay me on an hourly basis beginning next year, that would be fine.” Attached hereto as Exhibit C is a true and correct copy of the December 10, 2008 email from Mr. Horowitz confirming his continued representation of Bonella.

4. During the time that Mr. Horowitz has represented Bonella, Mr. Horowitz provided Bonella legal counsel on at least the following matters:

- Definition of Bonella’s relationships with Stephen Panigel and The Gerffert Co., Inc., the plaintiffs in the above-captioned case;
- Fratelli Bonella’s litigation and arbitration against Quadriga Art LLC, including the efforts to evaluate the merits of Fratelli Bonella’s position in that litigation in view of Stephen Panigel’s potential testimony and degree of cooperation and ultimately to settle that litigation in view of the potential degree of cooperation of Stephen Panigel;
- Intellectual property management and protection, including copyright, trade name and trademark registration, licensing and infringement matters;

- Contractual matters involving the sale of merchandise comprising the Bonella Line;
- Agency and distribution matters; and
- Selecting and interacting with other lawyers retained by Bonella.

5. In the course of Mr. Horowitz's representation of Bonella, I, and other people associated with Fratelli Bonella shared a great deal of confidential information with Mr. Horowitz. In fact, as Mr. Horowitz handled virtually all of Bonella's legal affairs in the United States for at least three years, Mr. Horowitz is familiar with essentially every aspect of Bonella's business – including those aspects which are not known to the public.

6. During the time that Mr. Horowitz represented Bonella, I understood that he also represented The Gerffert Co., Inc. ("Gerffert"). Gerffert was a distributor of Fratelli Bonella's products, and so the interests of Gerffert and Bonella were aligned. However, I recognized that it was possible that the interests of Gerffert and Bonella might diverge at some time in the future.

7. One such instance arose in or about October 2007. Around that time, Fratelli Bonella agreed in principle to purchase certain assets of Gerffert. Gerffert, and its owner – Stephen Panigel – desired to have Mr. Horowitz represent them in connection with this contemplated transaction.

8. Mr. Horowitz recognized that Fratelli Bonella was an existing client of his, and so he needed Fratelli Bonella to execute a conflict waiver to allow him to represent Gerffert and Mr. Panigel in this transaction adverse to Fratelli Bonella. Attached hereto as Exhibit D is a true and correct copy of the conflict waiver agreement on Mr. Horowitz's letterhead, and signed by me on behalf of Fratelli Bonella. This conflict waiver agreement permits Mr. Horowitz to represent Gerffert and Mr. Panigel in only specific matters that are adverse to Bonella, specifically:

“(i) sale of certain assets of Gerffert to Fratelli Bonella, s.r.l. and its designees; (ii) establishment of an ongoing relationship of Mr. Panigel with Fratelli Bonella, s.r.l. [sic] and its designees; (iii) negotiation of an agreement between Mr. Panigel and Fratelli Bonella, srl regarding Mr. Panigel’s participation in the outcome a [sic] lawsuit now pending in the U.S. District Court, Southern District of New York, between Fratelli Bonella, srl and Quadriga Art, Inc and (iv) the transactions and agreements related to all the foregoing”

Mr. Horowitz further clarified that the conflict waiver he was requesting only extended to these four matters, and that he would not represent anyone in any dispute that might arise between Gerffert, Mr. Panigel and Fratelli Bonella:

“I confirm that in the event that a dispute should arise between or among any of Mr. Panigel, Gerffert and Fratelli Bonella, s.r.l., I will not represent any party in any litigation arising therefrom.”

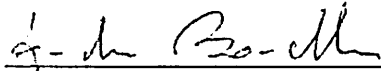
9. In that agreement, Mr. Horowitz further confirmed that he would not disclose the “non-public or proprietary information that [he] learned or may learn in connection with [his] representation of Fratelli Bonella, s.r.l. ...”

10. Neither I, nor anyone authorized by Fratelli Bonella, ever authorized Mr. Horowitz to represent Gerffert or Mr. Panigel, or anyone else, in any litigation against Bonella. Rather, as mentioned above, we specifically agreed that Mr. Horowitz would not represent Gerffert or Mr. Panigel in any litigation arising from a dispute between Gerffert, Mr. Panigel and Fratelli Bonella.

11. I understand that despite his agreement to the contrary, and his ethical obligations to the contrary, Mr. Horowitz has assisted Gerffert and Mr. Panigel in the above-captioned case since even before the inception of this case. In fact, once it was uncovered that Mr. Horowitz was working on this case on behalf of Gerffert and Mr. Panigel, I understand that Mr. Horowitz even filed a Notice of Appearance in this case – making him counsel of record for Gerffert and Mr. Panigel.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed November 1, 2010, at , Milan, Italy.

  
Andrea Bonella

## EXHIBIT A

~~CONFIDENTIAL~~  
Fax (516) 773-4424

March 18, 2003

Barton Cotton, Inc.  
1405 Parker Road  
Baltimore, MD 21227

Attention: Ms. Janet Shifflett, President

Re: *Stations of the Cross*

Gentlemen:

I am the attorney for Fratelli Bonella, S.R.L., of Milan, Italy. Fratelli Bonella is the copyright proprietor of the subject entitled "Stations of the Cross", which was recently published by you and offered for sale without authority or permission to do so (copy enclosed). It further appears that you have associated your trademark with this proprietary subject in violation of federal unfair competition statutes (see enclosed). For your information, the aforesaid subject is protected by the "restoration of copyright" provision of the federal copyright statutes, as recently amended, as well as by the Hague Convention.

We wish to give you an opportunity to resolve this matter without further difficulty. You must cease and desist immediately from publishing or distributing the infringing image and from offering for sale any infringing artwork. We ask that you contact this office without delay and advise us of the circumstances and extent of the publication and sale of the infringing artwork. Please be advised that if you do not cease and legal action is required to compel you to do so, my client will seek to recover its counsel fees as provided by the federal copyright law.

Very truly yours,

  
Mark M. Horowitz

MML/elf

Enclosure

cc: cletfx 1-800-807-2954



## EXHIBIT B

**Mark M. Horowitz**  
Attorney at Law

11 Grace Avenue - Suite 406  
Great Neck, N.Y. 11021

Tel. (516) 773-1250  
Fax (516) 773-4424  
Email: mhorowitzatty@nyn.com

July 6, 2006

Pratelli Bonella, S.R.L.  
Via Marconi 254  
Sesto S. Giovanni  
20099 Italy

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*To professional services rendered::*

2nd Quarter 2005-06: 12/01/05 through 2/28/06:	\$ 7,500.00
3rd Quarter 2005-06: 3/01/06 through 5/31/06:	<u>7,500.00</u>
Balance due as of June 1, 2006	\$ 15,000.00

**Mark M. Horowitz**  
Attorney at Law

11 Grace Avenue - Suite 406  
Great Neck, N.Y. 11021

Tel. (516) 773-3250  
Fax (516) 773-4424  
Email: mhorowitzatty@msn.com

December 4, 2006

Fratelli Bonella, S.R.L.  
Via Marconi 254  
Sesto S. Giovanni  
20099 Italy

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***To professional services rendered::***

4th Quarter 2005-06: 6/01/06 through 8/31/06:	\$ 7,500.00
1st Quarter 2006-07: 9/01/06 through 11/30/06:	<u>7,500.00</u>
Balance due as of December 1, 2006:	\$ 15,000.00

**Mark M. Horowitz**  
Attorney at Law

**11 Grace Avenue - Suite 406**  
Great Neck, N.Y. 11021

**Tel. (516) 773-3250**  
**Fax (516) 773-4424**  
**Email: mhorowitzatty@msn.com**

**June 6, 2007**

**Fratelli Bonella, S.R.L.**  
**Via Abbondio Sangiorgio nr. 12**  
**20145 Milano**  
**Italy**

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***To professional services rendered:***

<b>2nd Quarter 2006-07: 12/01/06 through 2/28/07:</b>	<b>\$ 7,500.00</b>
<b>3rd Quarter 2006-07: 3/01/07 through 5/31/07:</b>	<b><u>7,500.00</u></b>
<b>Balance due as of June 1, 2007</b>	<b>\$ 15,000.00</b>

**Mark M. Horowitz**  
Attorney at Law

11 Grace Avenue - Suite 406  
Great Neck, N.Y. 11021

Tel. (516) 773-3250  
Fax (516) 773-4424  
Email: mhorowitzatty@msn.com

December 1, 2007

Fratelli Bonella, S.R.L.  
Via Abbondio Sangiorgio, nr. 12  
20145 Milano  
Italy

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***To professional services rendered::***

4th Quarter 2006-07: 6/01/07 through 8/31/07:	\$ 7,500.00
1st Quarter 2007-08: 9/01/07 through 11/30/07:	<u>7,500.00</u>
Balance due as of December 1, 2007:	\$ 15,000.00

Mark M. Horowitz  
Attorney at Law

11 Grace Avenue - Suite 406  
Great Neck, N.Y. 11021

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Fax (516) 773-4424  
Email: mhorowitzattly@gmail.com

June 2, 2008

Fratelli Bonella, S.R.L.  
Via Abbondio Sangiorgio nr. 12  
20145 Milano  
Italy

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*To professional services rendered::*

2nd Quarter 2007-08: 12/01/07 through 2/29/08:	\$ 7,500.00
3rd Quarter 2007-08: 3/01/08 through 5/31/08:	<u>7,500.00</u>
Balance due as of June 1, 2008	\$ 15,000.00

18/6: BONIFACIO

**Mark M. Horowitz**  
Attorney at Law

11 Grace Avenue - Suite 406  
Great Neck, N.Y. 11021

Tel. (516) 474-9700  
Fax (516) 467-4757  
Email: mhorowitzatty@msn.com

December 1, 2008

Fratelli Bonella, S.R.L.  
Via Abbondio Sangiorgio, nr. 12  
20145 Milano  
Italy

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***To professional services rendered::***

4th Quarter 2007-08: 6/01/08 through 8/31/08:	\$ 7,500.00
1st Quarter 2008-09: 9/01/08 through 11/30/08:	<u>7,500.00</u>
Balance due as of December 1, 2008:	\$ 15,000.00

## EXHIBIT C



Kevin I. Shenkman

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Da:** Mark Horowitz [mailto:mhorowitzatty@msn.com]

**Inviato:** mercoledì 10 dicembre 2008 13.20

**A:** Mario Bonella

**Oggetto:** RE: R: Invoice for 4th quarter 2007-2008/1st quarter 2008-2009

Dear Mario: I'm happy to hear that everyone is well in Milan, but I'm sorry to hear of your financial troubles

1. Regarding my bill: I just want to clarify that although my invoice indicates a charge for "1st Quarter 2008-2009," that quarter covers the period September 1, 2008, through November 30, 2008, and those services have already been provided to you, mostly in consulting with Allen Reiter about the contents of the proposed settlement with Quadriga. The reason why the invoice is set up that way is because you first started paying my consulting fee in September (2004), so the "first quarter" of each year has always begun on September 1st.

I hope you will be able to pay the full invoice (\$15,000) as soon as possible. I depend totally on that money to pay my son's college tuition, which is now due. He is in his final term of college and it is now too late for me to make other arrangements to pay it. If I had known earlier that you would not be able to pay me, I could have applied for a student loan for my son. However, the tuition is due now in a few days and it is much too late to apply for a loan. If I cannot pay the tuition bill, my son will not be allowed to attend classes and he will not graduate with his class in June. I ask you please to try to pay me this invoice, Mario.

2. If you wish to pay me on an hourly basis beginning next year, that would be fine. Patrick Del Duca sent me an e-mail in which he said that you and he would like me to become involved in negotiations between Fratelli Bonella and Steve. Certainly, I am always willing to offer you my legal guidance and if I can be of any help in finding a solution to this problem between you and Steve, I would be very happy to do so. I informed Patrick that I would need a new "conflict waiver" letter, because the letters you and Steve signed last year do not cover the present situation.

Thank you for the big hug from the Bonella family. You know I feel the same way.

With warm regards,

Mark

Subject: R: Invoice for 4th quarter 2007-2008/1st quarter 2008-2009

Date: Wed, 10 Dec 2008 11:04:52 +0100

From: mario@fratellibonella.it

11/1/2010

To: mhorowitzatty@msn.com

Dear Mark

Thanks for your e-mail.

Everyone in Bonella is good and working hard trying to survive this tough period.

We really hope you and your family are fine

Regarding your bill I'm sad to tell you it is coming in the worst time.

We are bleeding for legal fees connected to Quadriga and, as you are aware because he cc you , we just received from Steve a very nasty letter where he threatens to sue Bonella and Hirten LLC.

Sorry to say that this letter has obliged us to hire a new lawyer ( and new bills) as we can not use your always valuable services for the evident conflict of interest.

For this reason we will do our best to pay you before the end of the year the last quarter of 2008 but, for next year and until this matter with Steve is solved we cannot agree on a general consulting contract.

We hope that this matter comes to quick conclusion so we can go back to business as usual but, in the mean time, our money is tied up so please bill us on an hourly basis when you are doing work that represents Bonellas' interest.

Please let us know what you would propose as your regular hourly rate. If you see an area where more than a few hours of your time would be required, please let me know in advance of beginning the work so that we can approve it and budget the necessary resources.

Sure you will understand

A big hug from me and all Bonella Family

Mario Bonella

Andrea Bonella

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**Da:** Mark Horowitz [mailto:mhorowitzatty@msn.com]

**Inviato:** lunedì 1 dicembre 2008 16.43

**A:** Mario Bonella

**Cc:** Fabio Gardiolo

**Oggetto:** Invoice for 4th quarter 2007-2008/1st quarter 2008-2009

Dear Mario: I hope this e-mail finds you and your family well.

I am attaching my bill for the 4th quarter 2007-2008 and the 1st quarter 2008-2009, totaling \$15,000. The wire instructions are as follows:

Bank Name:	JP Morgan Chase Bank, N.A.
Bank Address:	272-58 Grand Central Parkway Floral Park, N.Y. 11005
SWIFT CODE:	CHASUS33
Account Name (Beneficiary):	'Nina Taft In Trust For Mark Horowitz'
Account #:	218603314401

Thank you. Best wishes for the Christmas and New Year holidays.

Sincerely,  
Mark

11/1/2010

## EXHIBIT D

**Mark M. Horowitz**  
Attorney at Law

11 Grace Avenue - Suite 406  
Great Neck, N.Y. 11021

Tel. (516) 773-3250  
Fax (516) 773-4424

October 18, 2007

Fratelli Bonella, s.r.l.  
Via Abbondio Sangiorgio, 12  
20145 Milano, Italy

Re: Joint representation of Stephen Panigel and The Gerffert Company, Inc., a New York corporation; former and ongoing representation of Fratelli Bonella, s.r.l.

Gentlemen:

As discussed, this letter is to confirm that Fratelli Bonella, s.r.l. consents to (a) my representation of Stephen Panigel and The Gerffert Company, Inc., a New York corporation ("Gerffert") of which Mr. Panigel is the owner and President, in connection with (i) sale of certain assets of Gerffert to Fratelli Bonella, s.r.l. and its designees; (ii) establishment of an ongoing relationship of Mr. Panigel with Fratelli Bonella, s.r.l. and its designees; (iii) negotiation of an agreement between Mr. Panigel and Fratelli Bonella, s.r.l. regarding Mr. Panigel's participation in the outcome a lawsuit now pending in the U.S. District Court, Southern District of New York, between Fratelli Bonella, s.r.l. and Quadriga Art, Inc. and, (iv) the transactions and agreements related to all the foregoing (collectively the "Designated Matter"); and (b) my continuing representation of Fratelli Bonella, s.r.l. on matters unrelated to the Designated Matter.

I am informed that Manatt Phelps & Phillips LLP represents Fratelli Bonella, s.r.l. in connection with the Designated Matter. I have advised Mr. Panigel and Gerffert of my continuing representation of Fratelli Bonella, s.r.l. on matters unrelated to the Designated Matter, and separately provide you with a copy of a waiver of conflict by each of them.

By virtue of my representation of them in the Designated Matter, I have or may come into possession of confidential information concerning them that would be relevant to my representation of them in connection with the Designated Matter. Legal ethics prevent my disclosure of any such information to you. I will not disclose any non-public or proprietary information that I have learned or may learn in connection with my representation of Fratelli Bonella, s.r.l. on matters other than the Designated Matter to Mr. Panigel and Gerffert without your prior express written consent. I however, by signing below you are consenting that I may freely discuss both with my clients and with your attorneys, Manatt Phelps & Phillips LLP, any information relevant to the Designated Matter which I have come into possession of which may be confidential and/or proprietary but which has previously been disclosed to Gerffert and/or Mr. Panigel. Furthermore, I must advise you that a possible conflict of interest could arise in connection with the Designated Matter between the best interests of Fratelli Bonella, s.r.l. and the best interests of Stephen Panigel and/or The Gerffert Company, Inc. With regard to the Designated Matter, I represent only Mr. Panigel and The Gerffert Company, Inc. If you believe that my representation of Mr. Panigel and Gerffert in connection with the Designated Matter would adversely affect my representation of you in matters other than the Designated Matter, you should not consent to my representation of them in the Designated Matter.

Mark M. Horowitz  
Attorney at Law

Page 2

Fratelli Bonella, srl.  
October 18, 2007

If, however, you consent and agree to my representation of Mr. Panigel and Gerffert in connection with the Designated Matter and my continuing representation of Fratelli Bonella, s.r.l. in connection with matters unrelated to the Designated Matter, please so indicate by signing below and returning to me a copy of this letter. Prior to executing this consent I advise that you should seek the advice of independent legal counsel of your confidence. By executing this letter you confirm that you have had the opportunity to consult with such legal counsel and that you are entering into this agreement based upon such advice, or you have decided not to seek such advice. I confirm that in the event that a dispute should arise between or among any of Mr. Panigel, Gerffert and Fratelli Bonella, s.r.l., I will not represent any party in any litigation arising therefrom.

Very truly yours,

Mark M. Horowitz

Fratelli Bonella, s.r.l. consents to (i) the representation by Mark M. Horowitz in connection with the Designated Matter, of Stephen Panigel and Gerffert, (ii) the continuing representation by Mark M. Horowitz of Fratelli Bonella, s.r.l. in connection with matters unrelated to the Designated Matter, and (iii) the continuing representation by Mark M. Horowitz of Stephen Panigel and The Gerffert Company, Inc. in connection with matters unrelated to the Designated Matter, all as described above. You may deliver copies of this letter to Stephen Panigel and The Gerffert Company, Inc.

Fratelli Bonella, s.r.l.

By: A. L. Bonella

Name ANDEA BONELLA

Title VICE PRESIDENT

Date: OCTOBER 18<sup>th</sup> 2007